

IN THE U.S. DISTRICT COURT.
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION
CAUSE NO. CV-07-166-BLG-CSO

TIMOTHY McCULLOUGH	:	
	:	
Plaintiff	:	COURT TRANSCRIPT
	:	
vs.	:	
	:	
JOHNSON, RODENBURG & LAUINGER:	:	
	:	
Defendant	:	

April 14, 2009

R E P O R T E D B Y:

VIRGINIA LEYENDECKER, Certified Shorthand
Reporter, (NJ License No. 1701) and Notary Public, on
the above date, commencing at 8:30 a.m., at the
James F. Battin United States Courthouse, 316 North
26th Street, Billings, Montana.

BEFORE: Hon. Carolyn S. Ostby

VK LEYENDECKER, LLC
20 Medicine Crow Road
Columbus, Mt. 59019 - (406) 322-5061

1 A P P E A R A N C E S:

2 HEENAN LAW FIRM
3 BY: JOHN HEENAN, ESQUIRE
4 For the Plaintiff

5 BOHYER, SIMPSON & TRANEL, P.C.
6 BY: FRED SIMPSON, JR., ESQUIRE
7 and JOHN BOHYER, ESQUIRE
8 For the Defendant

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1 THE COURT: So we will now begin
2 with the opening statements. And Mr. Heenan, do
3 you wish to open for the plaintiff.

4 MR. HEENAN: Yes, please, Your
5 Honor.

6 THE COURT: You may proceed.

7 MR. HEENAN: Thank you, Your
8 Honor.

9 May it please the Court, counsel,
10 ladies and gentlemen of the jury. In North
11 Dakota, there is a regional debt collection firm
12 called Johnson Rodenburg. Johnson Rodenburg has
13 two offices, one in Bismarck and one in Fargo.
14 From those offices in North Dakota, Johnson
15 Rodenburg operates as a debt collector. As a
16 typical debt collector, the employees at Johnson
17 Rodenburg make phone calls to people, trying to
18 collect debts. They write letters to people
19 trying to collect debts.

20 Johnson Rodenburg is also a law
21 firm. It's owned by lawyers. It employs
22 lawyers. Specifically, it employs lawyers who
23 are admitted to practice law in the various
24 states that it collects debts in. One of those
25 states is Montana. Johnson Rodenburg has four

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1 lawyers who have sat for the Montana Bar and are
2 admitted to practice law in the state of Montana.

3 Johnson Rodenburg, as part of its
4 collection activity business, uses the court
5 system. What do I mean by, "uses the court
6 system"? Johnson Rodenburg sues people; dozens a
7 day, hundreds a month, thousands a year, in all
8 of the states that it collects debts in.

9 Why does Johnson Rodenburg use
10 the court system? The court system has very
11 powerful tools for people who are trying to
12 collect money from someone else. Let me explain
13 some of those tools.

14 Once you get a judgement against
15 someone, it's an automatic lien on the real
16 property they own. So if a lawsuit is filed, a
17 judgement is obtained. There's an automatic lien
18 on the person's property. Once there's a
19 judgement, Johnson Rodenburg is able to garnish
20 wages, able to file paperwork with the court and
21 take a portion of the person's wages that they
22 have sued. Johnson Rodenburg is able to submit
23 people to what's called a debtor's examination,
24 where the people they have sued are required to
25 come into court and are given an oath, just like

1 you ladies and gentlemen have done, and then they
2 are examined about their personal finances,
3 trying to uncover sources of collection.

4 Once there's a judgement, Johnson
5 Rodenburg is able to attach that judgement to
6 people's bank accounts. They can go in and what
7 is called sweep the account, take the money out
8 of it.

9 So who are all the people Johnson
10 Rodenburg sues as part of its collection
11 activity? I want to kind of explain. Johnson
12 Rodenburg collects purchased debt. It's a
13 specialized industry of the overall collection
14 industry. It's call purchased debt industry.

15 Brad, if I could have that up?

16 I think everybody in voir dire
17 said they have credit cards. Presumably we all
18 have balances on that credit card.

19 Let's assume that a person
20 doesn't make their payment. The credit card
21 company tries to collect. They will try to
22 collect for months or even years. At some point,
23 if they decide their efforts at collection aren't
24 working, they are not getting the person to pay
25 back the money, they will sell them to a company

1 called a debt buyer.

2 The credit cards don't sell one
3 account at a time. They sell them in batches,
4 bundles. There are hundreds, sometimes
5 thousands, sometimes tens of thousands, of people
6 on these lists. And the debt buyers bid on and
7 purchase these lists of old charged-off credit
8 card debt. The debt buyers, as the evidence will
9 show, purchase this debt for pennies on the
10 dollar. The credit cards have been unable to
11 collect it for months or years themselves, so
12 they turn around and sell it to the debt buyers.

13 The debt buyers oftentimes get no
14 more information than you would see on a
15 spreadsheet or would fit on a sticky note;
16 personal name, address, Social Security number,
17 phone number, the amount of the charged-off debt,
18 the interest rate. That's it. No documents.

19 The debt buyer in turn takes the
20 spreadsheet information in those batches and
21 sends it to Johnson Rodenburg for collection.
22 Johnson Rodenburg takes those people's names,
23 addresses, Social Security numbers, the
24 spreadsheet information, and puts together
25 lawsuits with the information they need to fill

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1 in the blanks to sue people.

2 So Johnson Rodenburg files a
3 lawsuit. They file the lawsuit for the face
4 value of the credit card balance, not what the
5 debt buyer paid for it. Johnson Rodenburg also
6 adds interest. Johnson Rodenburg also adds fees,
7 attorneys' fees, and then they sue people. And
8 when they sue people, because Johnson Rodenburg
9 are lawyers and they know the law, they know that
10 the overwhelming majority of the people they sue
11 aren't going to have lawyers, and they will win.

12 Subsequently Johnson Rodenburg
13 gets a judgement against the people. Usually
14 it's a rather fast process. They get a judgement
15 for the face value of the debt plus whatever
16 interest and fees they have tacked on. And once
17 Johnson Rodenburg has that judgement, then they
18 are able to use the tools of the legal system to
19 collect from the person. And again, those tools,
20 they are able to sweep people's bank accounts, go
21 in and take out whatever money is in there. They
22 are able to garnish people's wages, file
23 paperwork and get a portion of every paycheck
24 they get and they are able to get a lien on their
25 home.

1 So how does Johnson Rodenburg use
2 the courts? I told you they file lawsuits. They
3 file lots of lawsuits. They are lawyers, so that
4 makes sense that they file lawsuits. Johnson
5 Rodenburg's set up for quantity. They are set up
6 for volume. You're going to hear that they are a
7 factory that makes lawsuits, that makes
8 judgements.

9 And how do they do that? Johnson
10 Rodenburg uses a sophisticated computer program
11 called Collection Master. Collection Master is
12 able to interface with the debt buyers'
13 computers, and I'm not going to do justice to the
14 technology of how this works, but Johnson
15 Rodenburg's Collection Master hooks up with the
16 debt buyers' computers, they download the
17 spreadsheet information about the people, and
18 that gives them enough information to sue people.

19 Johnson Rodenburg employs a staff
20 of non-lawyers who are able to crank out
21 lawsuits. You're going to hear that Johnson
22 Rodenburg has one person full time, not an
23 attorney, whose sole job it is to draft these
24 Complaints for the lawyers at Johnson Rodenburg
25 to sign and file.

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1 The overwhelming majority of the
2 lawsuits Johnson Rodenburg files result in what
3 is called default judgement --

4 MR. SIMPSON: I object. I think
5 this goes beyond the scope of the Court's
6 pretrial ruling with respect to other litigation.

7 THE COURT: Overruled.

8 MR. HEENAN: What a default
9 judgement is, you win because the other side
10 doesn't show up. Just like in a basketball game
11 when only one team shows up; when the other team
12 doesn't show up, then the team that made it to
13 the arena wins the game.

14 That's how Johnson Rodenburg wins
15 the overwhelming majority of its lawsuits is
16 through default judgement. You will hear some of
17 the reasons for why people don't respond. A lot
18 of people are unable to respond. They are not
19 familiar with the court system. They don't know
20 how it works. They might have physical problems
21 that prevent them from researching the law,
22 finding out what you're supposed to do when you
23 get sued.

24 Of the small fraction of people
25 that actually do respond to the lawsuits that

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1 Johnson Rodenburg files, a very, very, very small
2 percentage of them appear through counsel. Most
3 of the people are trying to represent themselves.
4 And the logistics of it are such that Johnson
5 Rodenburg knows they are not going to be able to
6 get lawyers. When you're suing someone, for
7 instance, Mr. McCullough who is sued for \$3800,
8 you're going to be hard pressed to hire a lawyer
9 who is able to defend your case and not charge
10 you much more than the \$3800 you've been sued on.
11 And Johnson Rodenburg knows that. Johnson
12 Rodenburg knows how to win cases without having
13 any evidence in its file to prove that the person
14 owes anything.

15 How can you win a case without
16 evidence? Let me explain one way.

17 Exhibit 4-2, please. One of the
18 ways Johnson Rodenburg, when people do respond
19 and they are trying to defend themselves and
20 represent themselves, the judge will give them a
21 trial date. People assume, okay, I will show up
22 at my trial. I will defend myself. Well, in the
23 interim, Johnson Rodenburg sends out what are
24 called requests for admissions. And requests for
25 admissions are a tool that lawyers use in

1 lawsuits to ask the other side to admit things
2 that they think ought to be admitted, to
3 basically carve out what is for dispute at trial
4 and get rid of the stuff that everybody can agree
5 should agree on.

6 Please blow up this portion.

7 THE COURT: Are all of the
8 monitors working?

9 A JUROR: This one is not, 68.

10 THE COURT: Michael, can you
11 check and see what the problem is there? Excuse
12 me for interrupting.

13 Thank you, Michael.

14 You may proceed, Mr. Heenan.

15 MR. HEENAN: Thank you, Your
16 Honor.

17 One of the tools that Johnson
18 Rodenburg employs when the party they have sued
19 is trying to defend themselves, they send out
20 what are called requests for admissions. They
21 ask the person they have sued to admit certain
22 things. And Johnson Rodenburg, in its requests
23 for admissions, puts together this kind of
24 detailed explanation of what a request for
25 admission is. And it's largely what I've

1 characterized as legal mumbo jumbo. Not
2 contained anywhere in this language is the most
3 important part. If you don't respond to a
4 request for admission within 30 days, then it's
5 considered admitted automatically and you lose.
6 So they send out the requests for admission.
7 They don't tell the people they have sent them
8 to, who aren't lawyers, what happens if they
9 don't respond within 30 days. They wait 30 days,
10 if there is no response to these requests, then
11 they will file paperwork with the judge and say,
12 aha, we won. See, Judge, they admitted it.

13 That's the way, or one of the
14 ways, Johnson Rodenburg wins lawsuits without
15 having any evidence whatsoever in its own file.

16 Now, one of Johnson Rodenburg's
17 biggest suppliers of people to sue is a company
18 called CACV of Colorado. CACV is a debt buyer.
19 They purchase the debts in bundle from the credit
20 card companies for pennies on the dollars.
21 Sometimes CACV gets information from the credit
22 card companies, sometimes they don't. But when
23 they get the spreadsheet, people's names,
24 addresses, amount owed, they turn it over to
25 Johnson Rodenburg for collection. And you're

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1 going to see, contained in one of the batches
2 that CACV sent to Johnson Rodenburg in 2006 was
3 my client, Timothy McCollough. CACV sent Johnson
4 Rodenburg Mr. McCullough's name, his address, his
5 Social Security number, his phone number, the
6 amount they said he owed on a Chase Manhattan
7 credit card, the interest rate and the date of
8 last payment. Now, that was all, again,
9 information that fits on a sticky note. No
10 actual documents. What do I mean by documents?
11 What do I mean by evidence? As you're going to
12 hear, the actual credit card contract that the
13 person has that applies to their credit card,
14 that would be evidence that would prove what the
15 person owes the debt, account statements showing
16 that they use the card, when they used it, how
17 much they charged on it. That would be evidence
18 that the person owes the debt.

19 As you're going to hear, these
20 accounts, when they get purchased by the debt
21 buyers, are cheaper the older they are. That's
22 because of the statute of limitations. What that
23 means is, sometimes an account becomes so old
24 that you can't collect on it anymore. You can't
25 sue someone for it because it's past the statute

1 of limitations. When we talk about what evidence
2 would be important for the statute of
3 limitations, a payment receipt, some kind of a
4 stub showing that someone made a payment so the
5 person can see, okay, the person made a payment
6 three or four years ago so we are within the
7 statute of limitations. You're going to hear
8 within Montana, the statute of limitations is
9 five years, five years from the date of last
10 payment.

11 So Mr. McCullough, as part of
12 this batch from CACV, his name and that limited
13 spreadsheet information was turned over to
14 Johnson Rodenburg.

15 Exhibit 103, please. Now,
16 there's a contract between this debt buyer CACV
17 and Johnson Rodenburg about what Johnson
18 Rodenburg's obligations are when they get these
19 people's account information for collection.

20 Blow up this part here, please.

21 Let me explain a little bit.

22 CACV doesn't actually have any employees. It's a
23 subsidiary of a national debt collector called
24 Collect America, Limited, and apparently there is
25 some arrangement between Collect America, Limited

1 and CACV as to who owns the actual accounts. CA,
2 LTD is Collect America, the debt buyer. They
3 forward to local counsel, which here is Johnson
4 Rodenburg, an offer: Will you sue the person for
5 us? And go on to page two, please. And they
6 tell Johnson Rodenburg, When you get the file,
7 when you get the information that we have, you as
8 lawyers assess the completeness of that
9 information and the materials and then let us
10 know whether you want any additional materials or
11 information.

12 In this case, Johnson Rodenburg
13 didn't request anything about Mr. McCullough.
14 They didn't ask for a contract that applied to
15 him. They didn't ask for any account statements
16 showing when or if he even used this credit card.
17 They didn't request any documentation showing
18 when he would have stopped paying on the credit
19 card, if he even used it. They didn't request
20 any information as to who even owned this credit
21 card. They asked for no more information.

22 And then Exhibit 67, please.

23 So Collect America offered to
24 place Mr. McCullough's account. Pull up that
25 part, please. Top part. They told Johnson

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1 Rodenburg the original creditor was Chase
2 Manhattan, the debtor's name was Tim McCullough,
3 type of debt, credit cards. Take that down,
4 please, and blow up this bottom part.

5 Now, remember, Collect America
6 wasn't Mr. McCullough's credit card company.
7 They are nobody's credit card company. They have
8 no firsthand knowledge of how these people use
9 credit cards, how much they use the credit cards
10 for, they have no firsthand knowledge. So
11 Collect America tells Johnson Rodenburg, We make
12 no warranty as to the accuracy or validity of the
13 information we provide, and no warranty made
14 concerning the collectability. It's kind of like
15 a quick claim. Like in real estate, you don't
16 sell the person the house. You just agree that
17 you don't own it. What they are saying is, We
18 make no representations. That's up to you,
19 Johnson Rodenburg, as collectors and lawyers.
20 You need to do your own investigation.

21 So they send off Mr. McCullough's
22 account. They provide no information whatsoever.
23 They tell Johnson Rodenburg, Don't rely on what
24 we are telling you. You have an obligation
25 independently to make sure it's appropriate to

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1 sue this person.

2 Johnson Rodenburg, as you will
3 hear, makes no independent effort to verify that
4 it's legally appropriate to sue Mr. McCullough.
5 They don't request information from the credit
6 card company. They don't request information
7 even from their own client saying, Hey, do you
8 have anything more you can give us, any evidence
9 that we might need to show a judge after we sue
10 the person to show that he owes the debt? They
11 don't ask for any of that. They just sue Mr.
12 McCullough.

13 Exhibit 2-1, please. When
14 Johnson Rodenburg sues Mr. McCullough, they
15 demand \$3800 -- let me back up. When they sue
16 Mr. McCullough, it was past the statute of
17 limitations. It was in violation of Montana law
18 for them to sue him at that point. That's not
19 going to be an issue for you to decide.

20 Johnson Rodenburg not only sued
21 Mr. McCullough for the face value of the credit
22 card, \$3800, but then they also tacked on \$5500
23 in interest and approximately \$500 in attorneys'
24 fees.

25 As you're going to hear, in

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1 Montana, unless you have a contract that gives
2 you the right to claim attorneys' fees, it's
3 illegal to demand them. And Johnson Rodenburg
4 didn't have any contract, didn't have any
5 contractual right to claim attorneys' fees, yet
6 they tacked them on anyway and asked for about
7 \$500.

8 Now, remember that Johnson
9 Rodenburg doesn't know anything about the people
10 that it sues. These people in these batches,
11 they just file these lawsuits and collect
12 judgements and collect the judgements. They
13 don't know whether someone is a farmer, whether
14 they are a single mother, whether they are a
15 widower, unable to work, they don't know or care
16 to know the people's stories or circumstances.
17 So when they sued Mr. McCullough, they didn't
18 know anything about him.

19 Here's what Johnson Rodenburg
20 would have found out if they bothered to ask what
21 was going on with Mr. McCullough. Tim was a
22 custodian here in the Billings School District.
23 He worked out at the vo-tech. In May of 1990, he
24 was cleaning one evening and he was struck in the
25 head by an intruder.

1 After Mr. McCullough was struck
2 in the head, he had all sorts of mental problems.
3 He was diagnosed with posttraumatic stress
4 syndrome. He was diagnosed with stress disorder,
5 anxiety disorder. He has terrible migraines all
6 the time. He rarely leaves his house, by choice,
7 because he can't deal with any stress whatsoever.
8 And Johnson Rodenburg didn't know that and they
9 didn't care to know that. So when Johnson
10 Rodenburg sued Mr. McCullough, they had no idea
11 what was going to happen when they employed a
12 process server, a deputy sheriff, to come out to
13 Mr. McCullough's house and hand him a Complaint
14 and say, You've just been served. You've just
15 been sued.

16 Let me tell you what else Johnson
17 Rodenburg didn't know because they didn't bother
18 to conduct an investigation. The CACV had
19 already sued Mr. McCullough two years previously
20 through a different law firm. They sued Mr.
21 McCullough. He defended himself, or tried to,
22 and just before trial CACV dismissed the case.
23 And Mr. McCullough hadn't gotten the dismissal
24 paperwork in the mail before he gets a letter
25 from another debt collection law firm saying, You

1 owe this money. When are you going to pay this
2 money?

3 Mr. McCullough writes a letter
4 back to this debt collection law firm. He says,
5 I already got sued, the case got dismissed,
6 please leave me alone. It's the last he hears
7 from that debt collection law firm but it's not
8 the last he hears from this account.

9 Then he gets hit from a second
10 law firm from Johnson Rodenburg who is the third
11 law firm assigned to this account trying to
12 collect the same old debt. And Tim, despite his
13 mental condition, despite his problems, he knows
14 that he needs to respond. He knows he needs to
15 defend himself. So he goes down to the
16 courthouse and files an answer.

17 Please bring up his answer.

18 Here's what he writes: Forgive
19 my spelling. I have a head injury. Writing does
20 not come easy. The statute of limitations is up.
21 I have not had any dealings with any credit cards
22 in well over eight and a half years. I am
23 disabled. I get \$736 a month from Social
24 Security. My mortgage is \$724 a month. I'm now
25 a diabetic. I have no money, no insurance but

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1 Medicare.

2 Next page, please.

3 When workman's comp stopped
4 paying, I ran out of money. Chase would not work
5 with me. They passed it on to debt collectors.
6 They lied to me, insulted me, used bad language.
7 They called around the clock so I could not rest.
8 They got me so wound up and confused the healing
9 of my head injury stopped. They were hurting me
10 so I had to stop dealing with them so I could
11 recover. I'm still recovering. The pain they
12 caused and the new medical bills are worth more
13 than the money they want. This is the third time
14 they brought me to court on this account. The
15 first two times with Judge Hernandez. When will
16 it stop? Do I have to sue them so I can live
17 quietly in pain?

18 So Mr. McCullough files his
19 answer, sends it to Johnson Rodenburg. Johnson
20 Rodenburg lawyers look at his answer and don't do
21 anything about it. They do not follow up. They
22 don't say, Hey, this guy says he is on Social
23 Security disability and we are never going to be
24 able to collect Social Security disability
25 payments under the law. They don't do any

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1 follow-up on that. Is he really on Social
2 Security disability? If they would have done
3 some follow-up, they would have found, yeah, he
4 is on Social Security disability. He's been on
5 disability since the head injury back in 1990.
6 Johnson Rodenburg doesn't follow up and say, hey
7 what is this guy talking about statute of
8 limitations? Maybe we should get this
9 documentation. They didn't do any of that.

10 THE COURT: Two minutes, counsel.

11 MR. HEENAN: Thank you, Your
12 Honor.

13 And they certainly don't drop the
14 case.

15 I'm going to speed things up a
16 little bit here. So not only do they not drop
17 the case, they continue to pursue it. They send
18 him these requests for admissions that we just
19 looked at and talked about. They are trying to
20 win anyway.

21 CACV, their client, sent them an
22 e-mail and said, We made an mistake. They say,
23 We made a mistake. We told you he made a payment
24 in 2004. Actually that was wrong. That was
25 costs or unused costs.

1 So their own client is saying, We
2 made a mistake.

3 Johnson Rodenburg doesn't drop
4 the case. They are pushing it. They send him
5 these requests for admission. Tim comes to me.
6 He shows me the information. He hires a lawyer.
7 I make an appearance in the case and immediately
8 Johnson Rodenburg dismisses it.

9 And as you're going to see, and I
10 won't have time to show you now, internally the
11 Johnson Rodenburg lawyers sent an e-mail to the
12 effect of, oh, shoot, we got caught. There's a
13 lawyer on the other side. We need evidence. We
14 need documents. CACV writes back and says, We
15 told you, there is no evidence, no documents
16 about this guy.

17 Now, let me explain, given the
18 short length of time. We went through a process,
19 prior to you ladies and gentlemen coming here for
20 trial, called summary judgement and we presented
21 to Her Honor the facts, as you're going to hear
22 in the trial, and she made certain rulings. And
23 she found that Johnson Rodenburg violated the
24 federal Fair Debt Collection Practices Act four
25 different ways by suing Mr. McCullough on a

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1 time-barred debt which was illegal to bring, by
2 continuing to process the time-barred debt even
3 though their own client gave them information
4 showing it was time-barred, and by trying to
5 collect on attorneys' fees which were
6 inappropriate to collect under Montana law, and
7 by using this request for admission form which
8 Her Honor found to be unfair and deceptive and a
9 violation of the federal law.

10 So why are we here? Because
11 Johnson Rodenburg's also a lawyer. They are a
12 law firm. And they are required to play by the
13 rules of law they have to play by in Montana. So
14 we are going to put on evidence to show you that
15 they did not follow the rules here, with Mr.
16 McCullough or as a business practice in the
17 people they are suing in this state.

18 Number two, based on the judge's
19 findings, the judge's rulings that this law firm
20 broke the law, you're going to be asked to award
21 some damages. We will explain to you the nature
22 of those damages. One of them is going to be
23 punitive damages, damages to punish this law firm
24 for the conduct towards Mr. McCullough and in the
25 context of the business practice in the state of

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1 Montana and all the lawsuits they are filing
2 against people in the state of Montana.

3 The one lawyer that sued Mr.
4 McCullough, as you're going to hear, he sues
5 approximately 2,000 people a year.

6 THE COURT: That's time, Counsel.

7 MR. HEENAN: Thank you, Your
8 Honor.

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1 C E R T I F I C A T E O F O F F I C E R.

2

3 I, Virginia Leyendecker, a Certified Shorthand
4 Reporter and Notary Public, do hereby certify that
5 the foregoing is a true and accurate transcript of
6 the testimony as taken stenographically by and before
7 me at the date, time and location aforementioned.

8 I do further certify that I am neither a relative
9 nor employee, nor attorney or counsel to any parties
10 involved; that I am neither related to nor employed
11 by any such attorney or counsel, and that I am not
12 financially interested in the action.

13

14

15

16 /s/Virginia E. Leyendecker, CSR

17 Notary Public

18 My Commission expires May 3, 2010

19 NJ C.S.R. License No. XI-1701

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